

## Message Text

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ACTION STR-07

INFO OCT-01 EUR-12 EA-10 IO-13 ISO-00 STRE-00 AF-10  
ARA-10 NEA-10 AGRE-00 CEA-01 CIAE-00 COME-00  
DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05 L-03  
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15  
ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15  
OIC-02 /168 W

-----072968 110337Z/73

P 101849Z APR 78  
FM USMISSION GENEVA  
TO SECSTATE WASHDC PRIORITY 8175  
INFO ALL EC CAPITALS  
AMEMBASSY HELSINKI  
AMEMBASSY OSLO  
AMEMBASSY OTTAWA  
AMEMBASSY STOCKHOLM  
AMEMBASSY TOKYO

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USMTN USEEC

STR FOR ACTION

STR PASS CODEL  
E.O. 11652: N/A  
TAGS: MTN, ETRD, EEC  
SUBJECT: MTN: INFORMAL PLURILATERAL MEETING ON  
- SUBSIDY/COUNTERVAILING DUTIES, APRIL 6-7, 1978

1. SUMMARY: US, EC, NORDIC, CANADIAN, AND JAPANESE  
DELS HELD INFORMAL PLURILATERAL MEETING ON SUBSIDY/  
CVD FOCUSING ON PAPERS DRAFTED BY US ON SUBSIDIES  
AND BY THE EC ON PROCEDURES FOR CERTIFICATION,  
CONSULTATION AND CONFLICT RESOLUTION. BULK OF  
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SESSION WAS DEVOTED TO EXPLANATION OF PAPERS,  
GENERAL OBSERVATIONS AND RESPONSES TO TECHNICAL  
QUESTIONS. DISCUSSION PROCEEDED IN A BUSINESSLIKE  
FASHION WITH DELEGATIONS RECOGNIZING THE NEED TO  
GET DOWN TO WORK TO ACHIEVE AGREEMENT. PAPERS WILL  
BE REVISED IN LIGHT OF COMMENTS RECEIVED FROM OTHER  
DELS AND A FOLLOW-UP MEETING HAS BEEN SCHEDULED FOR

THE LAST WEEK IN APRIL. END SUMMARY.

2. ON APRIL 6 AND 7 THE US, EC, NORDICS, CANADIANS AND JAPANESE WERE JOINED BY THE GATT SECRETARIAT (LINDEN) IN AN INFORMAL PLURILATERAL DISCUSSION OF SUBSIDIES AND COUNTERVAILING MEASURES. US DEL (RIVERS ET AL) INITIATED DISCUSSION BY URGING COUNTRIES TO RELINQUISH POSTURING TACTICS AND BEGIN THE REAL WORK OF NEGOTIATING AN AGREEMENT. US PAPER ON SUBSIDIES WAS INTRODUCED AS A PRODUCT OF SEVERAL BILATERAL DISCUSSIONS WITH KEY DELEGATIONS BUT DID NOT REPRESENT CONSENSUS ON THE ISSUES. AFTER OUTLINING THE BASIC ELEMENTS OF THE DRAFT, THE FLOOR WAS OPENED TO OBSERVATIONS AND QUESTIONS.

3. CANADA AMB GREY AND EC REP KLEIN TOOK LEAD THROUGH-OUT MOST OF THE DISCUSSION IN COMMENTING ON THE US PAPER. GREY STARTED OFF THE DISCUSSION BY INDICATING WHAT HE CONSIDERED SERIOUS GAPS IN THE PAPER, PRINCIPALLY THE LACK OF COUNTERVAILING DUTIES (CVD) PROVISIONS AND A MEANINGFUL TEST OF INJURY. THE INJURY TEST FOR CVD, GREY ASSERTED, MIGHT BE MORE RIGOROUS THAN THAT FOR AN ANTI-DUMPING ACTION SINCE CVD'S ARE AIMED AT GOVERNMENTAL POLICIES AS OPPOSED TO PRICING PRACTICES OF A PRIVATE COMPANY. RIVERS COUNTERED BY OBSERVING THAT THE SOURCE OF INJURY, WHETHER STEMMING FROM A GOVERNMENTAL POLICY OR A FIRM'S LIMITED OFFICIAL USE

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PRICING PRACTICE, WAS IRRELEVANT TO THE FACT THAT INJURY HAD OCCURRED. TO PROMOTE A CONCRETE DISCUSSION ON INJURY CRITERIA, KLEIN CIRCULATED A PERSONAL DRAFT OF POSSIBLE ELEMENTS FOR FUTURE CONSIDERATION (HAND CARRIED TO WASHINGTON BY GREENWALD). THROUGHOUT THE DISCUSSION, THE CANADIANS AND THE EC underscored THEIR CONCERN FOR THE US TO FULLY IMPLEMENT IN US LAW ANY AGREED INJURY CRITERIA AND SOUGHT ASSURANCE THAT THERE WOULD BE NO REPETITION OF THEIR UNFAVORABLE EXPERIENCE IN THE KENNEDY ROUND NEGOTIATION OF THE ANTI-DUMPING CODE WHERE, IN THEIR VIEW, THE US HAS NOT YET FULLY ADHERED TO THE AGREEMENT.

4. DOMESTIC SUBSIDIES: ON DOMESTIC SUBSIDIES, GREY BELIEVED THAT A QUANTITATIVE APPROACH TO GUIDELINES MIGHT BE TOO AMBITIOUS. KLEIN POINTED TO PRACTICAL DIFFICULTIES OF EMPLOYING NORMATIVE GUIDELINES, ASSUMING THEY EVEN COULD BE AGREED UPON. THE Pervasiveness USE OF DOMESTIC SUBSIDIES TO ACHIEVE ECONOMIC GROWTH AND TO SUPPORT IMPORTANT ECONOMIC SECTORS (E.G. ENERGY AND TRANSPORTATION) WOULD MAKE ANY PEJORATIVE REFERENCE TO SUCH SUBSIDIES UNACCEPTABLE FOR THE EC. (IN PRIVATE

CONVERSATION KLEIN REVEALED THAT MEMBER STATES HAD NOT REACTED AS STRONGLY AS HE EXPECTED AGAINST THE REFERENCE TO DOMESTIC SUBSIDIES IN THE US PAPER.) US RESPONDED THAT QUANTITATIVE GUIDELINES WERE PREFERABLE, WHEREVER POSSIBLE, AND STRESSED THE CRITICAL IMPORTANCE OF AGREEMENT ON GUIDELINES ON DOMESTIC SUBSIDIES FOR ANY ACCEPTABLE SUBSIDY AGREEMENT. IN CONTRAST TO HIS OPENING STATEMENT GREY RAISED THE CANADIAN IDEA OF ESTABLISHING CEILINGS ON CERTAIN SUBSIDY PRACTICES TO PROVIDE A MEASURE OF CERTAINTY (E.G. SUBSIDIES WITHIN THE CEILING WOULD NOT BE SUBJECT TO CVD), BUT KLEIN THOUGHT THE IDEA WOULD NOT BE HELPFUL. US AGREED, AT CANADIAN, EC AND JAPANESE URGING, TO PROVIDE A LIST OF FACTORS

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OIC-02 /168 W

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P 101849Z APR 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 8176

INFO ALL EC CAPITALS

AMEMBASSY HELSINKI

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

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CONSIDERED BY USG IN CVD CASES INVOLVING DOMESTIC SUBSIDIES TO ASSIST IN ESTABLISHING THE PARAMETERS OF THE DISCUSSION. THE NORDICS JOINED WITH THE EC IN EMPHASIZING THAT THE FOCUS OF THE RULES SHOULD BE ON THE TRADE EFFECTS OF SUBSIDIES, WITH KLEIN ASSERTING THAT ACTION UNDER GATT ARTICLE XVI WOULD REQUIRE "SERIOUS PREJUDICE" (UNDEFINED) TO BE SHOWN. IN FURTHER DISCUSSION OF ART. XVI/XXIII REMEDIES, EC DREW A DISTINCTION BETWEEN NULLIFICATION AND IMPAIRMENT OF BENEFITS VERSUS IMPEDED OBJECTIVES OF AN AGREEMENT. KLEIN STATED THAT STRICT OBLIGATIONS

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ON DOMESTIC SUBSIDIES WHEREBY ANY NEW SUBSIDIES OR INCREASE IN OLD SUBSIDIES WOULD BE CONSIDERED AS AUTOMATICALLY NULLIFYING OR IMPAIRING THE BENEFITS OF THE AGREEMENT IS "NOT ON". USE OF SUCH SUBSIDIES, HOWEVER, COULD HAVE A BEARING ON THE OBJECTIVES OF THE AGREEMENT, E.G. NOT TO CAUSE INJURY BY THE USE OF DOMESTIC SUBSIDIES. US RESPONDED THAT IF A VALUE OF A TARIFF BINDING WERE UNDERCUT, THEN THE VALUE OF THE AGREEMENT WOULD BE DIMINISHED, AND SHARED VIEW THAT PROCEDURES SHOULD BE DESIGNED TO PRESERVE THE OBJECTIVES OF THE AGREEMENT.

5. RAW MATERIALS: GREY SUGGESTED THAT THE GROUP EXPLORE THE POSSIBILITY OF ESTABLISHING DIFFERENT RULES ON SUBSIDIZATION FOR THE DEVELOPMENT OF SUPPLIES OF RAW MATERIALS FROM RULES FOR MANUFACTURING SUBSIDIES. SUBSIDIZATION OF SUCH DEVELOPMENT, WHICH MANY COUNTRIES DO THROUGH THEIR TAX LAWS, WILL HAVE A LONG TERM IMPACT ON SUPPLIES AND IS RELATED TO THE ISSUE OF ACCESS OF SUPPLIES WHICH HAS BEEN RAISED IN THE MTN. EC DOUBTED WHETHER SPECIAL PROVISIONS WOULD BE NEEDED IF AN ADEQUATE INJURY TEST WERE ADOPTED. THE US EXPRESSED WILLINGNESS TO EXPLORE THE IDEA FURTHER.

6. REGIONAL AIDS: THE IDEAS ON REGIONAL AIDS CONTAINED IN THE US PAPER WERE CHARACTERIZED BY GREY AS AN "INTERESTING INTELLECTUAL" APPROACH, BUT HE WAS SKEPTICAL ABOUT THEIR PRACTICAL WORKABILITY, POINTING TO EXTENSIVE (AND SPECULATIVE) ECONOMIC ANALYSIS REQUIRED. AN IMPORTANT RELATED TOPIC, ACCORDING TO GREY, IS INTERNATIONAL COMPETITION INVOLVING REGIONAL ASSISTANCE PROGRAMS, E.G. SUBSIDIES AVAILABLE IN NOVA SCOTIA VERSUS THOSE IN THE STATE

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OF ALABAMA, WHICH MUST BE DEALT WITH IN THE SUBSIDIES AGREEMENT. GREY ALSO DREW ATTENTION TO THE SITUATION WHEN TRANSNATIONAL CORPORATIONS TAILOR COMPLAINTS TO AVOID HITTING THEIR SUBSIDIARIES LOCATED ABROAD. A POSSIBLE WAY AROUND THIS PROBLEM WOULD BE TO INCLUDE LANGUAGE TO THE EFFECT THAT GOVERNMENTS SHOULD AVOID TAKING ACTION AGAINST THE KINDS OF SUBSIDIES IT GRANTS ITSELF TO INDUSTRIES.

7. AGRICULTURAL SUBSIDIES: US BRIEFLY REVIEWED ITS IDEAS ON AGRICULTURAL SUBSIDY RULES INCLUDING POSSIBLE ADOPTION OF A "NATIONAL" MARKET SHARE CONCEPT IN GATT ART. XVI:3 AND LINKING AN INJURY TEST TO INTERFERENCE IN DOMESTIC AGRICULTURAL PROGRAMS. US NOTED THAT INFORMAL DISCUSSIONS REGARDING AGRI-CULTURE WERE STILL IN PROCESS. OTHER DELS WERE NOT PREPARED TO EXCHANGE VIEWS ON THE U.S. IDEAS.

8. EMERGENCY MEASURES: GREY RECOGNIZED THAT A HIGHLY VISIBLE INFLUX OF SUBSIDIZED IMPORTS COULD CAUSE POLITICAL DIFFICULTIES REQUIRING QUICK ATTENTION. EMERGENCY PROVISIONS (E.G. PROVISIONAL DUTIES) FOR DEALING WITH THE PROBLEM COULD BE EMPLOYED APART FROM THE NORMAL PROCESS OF BILATERAL CONSULTATIONS AND INTERNATIONAL PROCEDURES. KLEIN POINTED TO EMERGENCY PROVISIONS CONTAINED IN THE EC PAPER ON PROCEDURES WHEN ACTION IS TAKEN UNDER ART. VI.

9. DUAL PRICING: GREY SAID THAT CANADA WOULD RESERVE ITS POSITION ON WHETHER THE DUAL PRICING CRITERION SHOULD BE ELIMINATED, BUT NOTED THAT MEANINGFUL INJURY TESTS COULD RENDER THAT CRITERION UNNECESSARY. KLEIN, IN SLIGHT BACKTRACKING FROM HIS POSITION IN PREVIOUS CONVERSATIONS, SHARED GREY'S VIEW, BUT SUGGESTED THAT CRITERIA COULD BE ESTABLISHED FOR CASES WHERE THE USE OF DUAL PRICING CRITERIA WAS NOT POSSIBLE (E.G. A FIRM EXPORTING ALL OF ITS SUB-

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SIDIZED PRODUCTION AT UNIFORM PRICES). KLEIN RAISED THE NOTION THAT SUBSIDIES GIVEN UNDER AN ADJUSTMENT ASSISTANCE PROGRAM TO INCREASE A FIRM'S COMPETITIVENESS AND AVOID ESTABLISHMENT OF IMPORT

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OIC-02 /168 W

-----073117 110337Z /73

P 101849Z APR 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 8177

INFO ALL EC CAPITALS

AMEMBASSY HELSINKI

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AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

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RESTRICTIONS SHOULD NOT BE ACTIONABLE UNLESS DUAL PRICING WAS IN EVIDENCE. RIVERS OBSERVED THAT DUAL PRICING SITUATIONS COULD BEST BE HANDLED WITHIN A DUMPING CONTEXT. FURTHERMORE, SUBSIDIES MAY NOT NECESSARILY HAVE A DIRECT AND IMMEDIATE EFFECT ON PRICING BUT COULD BE USED TO INCREASE A FIRM'S COMPETITIVENESS IN OTHER WAYS.

10. EXPORT SUBSIDIES: GREY SUGGESTED THAT THE DEVELOPMENT OF AN ILLUSTRATIVE LIST OF EXPORT SUBSIDIES COULD PROCEED AS A SEPARATE EXERCISE FROM THE ELABORATION OF GENERAL SUBSIDY RULES. HE PROFESSED INTEREST IN THE US TEXT REGARDING DIRECT TAX PRACTICES ENCOURAGING ENTERPRISE PRICING PRACTICES THAT DO NOT CONFORM TO STRICT ARMS LENGTH PRICING

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POLICIES, BUT REMARKED THAT REFINEMENT OF THAT

CONCEPT SHOULD BE TACKLED BY TAX EXPERTS. THE DEVELOPMENT OF THE LIST, IN KLEIN'S VIEW, SHOULD BE APPROACHED SUBSEQUENT TO THE ESTABLISHMENT OF PROCEDURES SO THAT THE CONSEQUENCES OF USING MEASURES CONTAINED ON THE LIST ARE KNOWN BEFORE THE LIST IS DRAWN-UP. GREY PUT OFF KLEIN, STATING IN FRANK TERMS THAT WORK HAS TO BEGIN AT SOME POINT IN THE CIRCLE OF SUBSIDY RULES/ COUNTER MEASURE PROCEDURES AND WAS SUPPORTED BY JAPAN (UKAWA) IN SUGGESTING THAT WORK BE BASED ON THE AGREED 1960 GATT EXPERTS LIST RATHER THAN THE US VERSION. RIVERS SAID THAT THE US TEXT COULD BE REGARDED AS OUR COMMENTS ON THE 1960 LIST TO BE CONSIDERED BY THE GROUP. IN RESPONSE TO QUESTIONS BY UKAWA AND GREY US EXPLAINED THAT THE USE OF PROHIBITED SUBSIDIES WOULD CREATE A PRESUMPTION THAT SERIOUS PREJUDICE HAD OCCURRED, BUT AGREED WITH THE EC OBSERVATION THAT THIS PRESUMPTION WAS OPEN TO FACTUAL REBUTTAL.

11. PROCEDURES FOR NOTIFICATION, CONSULTATION AND CONFLICT RESOLUTION: THE EC INTRODUCED ITS PAPER ON NOTIFICATION, CONSULTATION AND CONFLICT RESOLUTION (DISTRIBUTED ON THURSDAY MORNING; BEING HAND CARRIED TO WASHINGTON BY GREENWALD) AS CONTAINING PROCEDURES FOR FOCUSING ON THE EFFECTS OF SUBSIDIES. KLEIN REPEATED THE EC'S WELL-KNOWN POSITION THAT SUBSIDIES ARE NOT INTRINSICALLY EVIL. RIVERS POINTED OUT THAT THE INCREASING USE OF SUBSIDIZATION WOULD LEAD TO AN INCREASE IN TRADE FRICTIONS AND THEREFORE, AN EFFECTIVE AND FAIR MECHANISM IS NEEDED TO MANAGE SUCH CONFLICTS. GREY ASSERTED THAT THE BASIC GATT MECHANISM HAS A CREDIBLE RECORD IN DEALING WITH LIMITED OFFICIAL USE

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DISPUTES AND CLAIMED THAT THE KEY FACTOR WAS THE UNWILLINGNESS OF PARTICIPANTS TO ACTUALLY UTILIZE PROCEDURES AVAILABLE.

12. IN SPECIFIC COMMENTS ON THE EC PAPER, THE U.S. AND CANADA CRITICIZED THE IMBALANCE OF ITS PROVISIONS. GREY NOTED THE LACK OF PROVISIONS DEALING WITH IMPORT SUBSTITUTION AND THIRD COUNTRY SUBSIDIES. IN ADDITION, GREY SAID THAT THE GENERAL SUBSIDY RULES SHOULD BE CLEARER BEFORE HE COULD MAKE EXTENSIVE COMMENTS ON THE DISPUTE SETTLEMENT MECHANISM. IN PARTICULAR, HE QUERIED WHETHER THE U.S. STILL HELD ITS POSITION THAT PROHIBITED EXPORT SUBSIDIES ARE PER SE INJURIOUS AND SHOULD BE SUBJECT TO UNILATERAL COUNTERVAILING DUTY DETERMINATIONS WITHOUT AN INJURY TEST. RIVERS RESPONDED THAT USE OF PROHIBITED

SUBSIDIES SHOULD BE REGARDED AS A PRIMA FACIE CASE OF NULLIFICATION AND IMPAIRMENT OF THE AGREEMENT. WHILE THERE MIGHT BE AN ELEMENT OF MULTILATERAL REVIEW, THERE SHOULD ALSO BE UNILATERAL RIGHTS. THESE TWO ASPECTS COULD BE MESHED TOGETHER AT SOME STAGE. THIS PROVOKED A LIVELY EXCHANGE ON AN INDIVIDUAL COUNTRY'S RIGHT TO DETERMINE WHETHER ANOTHER COUNTRY HAD VIOLATED ITS INTERNATIONAL OBLIGATIONS. GREY SUGGESTED THAT DOMESTIC AND INTERNATIONAL PROCEDURES COULD OPERATE IN PARALLEL WITH POSSIBLE RETROACTIVE APPLICATION OF COUNTERVAILING DUTIES IF THE INTERNATIONAL BODY FOUND A VIOLATION OF THE RULES. THIS WOULD GET AT THE PROBLEM OF A COUNTRY SUBSIDIZING EXPORTS, CAUSING INJURY IN THE MARKET, BUT THEN ELIMINATING THE SUBSIDY AND NOT SUBJECT TO ANY SANCTIONS. KLEIN MENTIONED THE POSSIBILITY OF PROVISIONAL MEASURES PENDING THE OUTCOME OF THE INTERNATIONAL DELIBERATIONS, BUT, STRESSED THAT THE GATT ARTICLE XVI ROUTE SHOULD NOT BE ANY EASIER THAN THAT UNDER GATT ARTICLE VI. RIVERS PROPOSED THAT LIMITED OFFICIAL USE

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P 101849Z APR 78  
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ELEMENTS OF TIMING, RIGHTS OF SIGNATORIES, AND  
RELATIONSHIP OF INTERNATIONAL TO DOMESTIC PROCEDURES  
SHOULD BE FURTHER EXPLORED TO FIND AN ACCEPTABLE  
SOLUTION.

13. ON OTHER ELEMENTS OF THE PAPER, THE U.S. CONSIDERED  
THE NOTIFICATION PROVISIONS WERE IMBALANCED WITH  
UNNECESSARILY RIGOROUS REQUIREMENTS FOR SOLICITING  
INFORMATION REGARDING SUBSIDY PRACTICES. U.S. WAS  
CRITICAL OF THE WEAK PROVISIONS ON RESOLUTION OF  
DISPUTES TO WHICH THE EC RESPONDED THAT THE OBJECTIVE  
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OF THE PROCESS WAS CONCILIATION OF DIFFERENCES,  
RECOGNIZING THE POLITICAL REALITIES OF INTERNATIONAL  
TRADE, RATHER THAN A STRICT JURIDICAL PROCESS. PRO-  
VISIONS IN THE EC PAPER FOR AN INTERNATIONAL BODY  
TO MAKE INJURY DETERMINATIONS IS UNACCEPTABLE TO  
THE U.S. BUT, AFTER SOME DISCUSSION, U.S. EXPRESSED  
WILLINGNESS TO EXPLORE THE POSSIBILITY OF AN  
INTERNATIONAL REVIEW OF SUCH DETERMINATIONS (A RIGHT  
WHICH ALREADY EXISTS IN GATT). EXTENSIVE REFERENCES  
TO DOMESTIC PROCEDURES IN THE EC DOCUMENT ELICITED  
U.S. OBSERVATION THAT AMOUNT OF DETAIL PROPOSED BY  
EC IS NOT APPROPRIATE FOR DISCUSSION OF INTERNATIONAL  
DISPUTE SETTLEMENT. AMB. GREY SUGGESTED THAT  
A SEPARATE PAPER BE PREPARED ON DOMESTIC PROCEDURES.  
THIS TOPIC WAS NOT FOLLOWED UP.

14. FUTURE WORK: THE GROUP AGREED WITH THE U.S.  
SUGGESTION THAT BOTH THE U.S. AND EC PAPERS BE  
REVISED IN LIGHT OF COMMENTS RECEIVED FROM OTHER  
DELEGATIONS AND THAT ANOTHER INFORMAL PLURILATERAL  
SESSION BE HELD AT THE END OF THE MONTH.

15. DRAFTED BY WALLAR. MCDONALD

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## Message Attributes

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**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENT DRAFT, MEETINGS, COUNTERVAILING DUTIES, SUBSIDIES  
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**Copy:** SINGLE  
**Draft Date:** 10 apr 1978  
**Decapton Date:** 01 jan 1960  
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**Disposition Approved on Date:**  
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**TAGS:** ETRD, US, MTN, EEC  
**To:** STATE  
**Type:** TE  
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